

REMARKS

This amendment is being filed in response to the Office Action dated July 3, 2008. For the following reasons, this application should be considered in condition for allowance and the case passed to issue.

Claim Rejection – 35 U.S.C. §103

Claims 1, 5-11, 15-18 and 21-22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Fielden et al. in view of Toida. This rejection is hereby traversed and reconsideration and withdrawal thereof are respectfully requested. The following is a comparison of the present invention as currently claimed with the Fielden and Toida references.

Claim 1, for example, recites an apparatus for measuring surface topography of a surface comprising a linearly polarized light source that generates a light beam, and optics that focus the light beam on a surface to be measured such a normally incident beam reflection is provided. The optics include polarization optics such that the incident beam has a first polarization and a reflected beam from the surface has a second polarization different from the first polarization. The optics include: half-wave plate that receives the light beam from a linearly polarized light source; a long working distance microscope objective positioned to receive the light beam as an input from the half-wave plate and output a converging light beam; and a polarizing beam splitter positioned to receive as an input the output of a long working distance microscope objective and produce as an output a light beam with the first polarization. A position sensitive detector is positioned to detect the reflected beam.

It is respectfully submitted that neither Fielden nor Toida show or suggest, either alone or in combination, the invention as currently claimed. Fielden, U.S. Patent No. 6,917,419, shows in Figure 3, and describes at Column 38, an embodiment of a system configured to determine at

least two properties of a specimen. The description in Column 38 of the system 32 includes a large laundry list of components, and does not provide the specificity that would enable one of ordinary skill in the art to consider the claims of the present invention to be obvious. For example,

Column 38, lines 28-43 states that the measurement device 34 may include any number of additional optical components (not shown). Additional optical components may include, but are not limited to, beam splitters or dichroic mirrors, quarter wave plates, polarizers such as linear and circular polarizers, rotating polarizers, rotating analyzers, collimators, focusing lenses, additional lenses, folding mirrors, partially transmissive mirrors, filters such as spectral or polarizing filter, spatial filters, reflectors, deflectors, and modulators. Each of the additional optical component may be coupled to or disposed within the elimination system or the detection system. Furthermore, the measurement device may include a number of additional electromagnetic devices (not shown) that may include magnetic condenser lenses, magnetic objective lenses, electrostatic deflection systems, beam limiting apertures, and Wien filters.

With such a long list of items that can be substituted in and out, potentially millions of different combinations may be formed by selection and arrangement of these different components. There is no guidance as to how these components are to be arranged. At Column 38, lines 52-61, an example is provided at the optical component 48 that may include, but not being limited to, “a polarizer, a spectral or polarizing filter, and a quarter wave plate”, but there is no specificity provided that would allow one of ordinary skill in the art to make obvious the arrangement as specifically recited in the claims of the present application.

For example, the claims recite that the optics includes a half-wave plate that receives the light beam from the linearly polarized light source; a long working distance microscope objective positioned to receive the light beam as an input from the half-wave plate and output a converging light beam; and a polarizing beam splitter positioned to receive as an input the output of the long working distance microscope objective and produce as an output a light beam with the first polarization. Without providing the specificity of the claimed components in the order

in which the claimed components are arranged, one of ordinary skill in the art is left with simply a catalog of components that can be selected for use in some type of arrangement. However, it is respectfully submitted that the arrangement as claimed is not made obvious by this catalog of components provided by Fielden.

Toida, U.S. Patent No. 5,428,447, does not overcome any of the deficiencies noted with respect to Fielden. Accordingly, even if combined with Fielden, the combination does not make obvious the claims of the present invention. Therefore, the rejection of the claims under 35 U.S.C. §103 should be reconsidered and withdrawn and such actions are courteously solicited.

In light of the amendments and remarks above, this application should be considered in condition for allowance and the case passed to issue. If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated to expedite the prosecution of the application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 502624 and please credit any excess fees to such deposit account.

Respectfully submitted,
McDERMOTT WILL & EMERY LLP
/John A. Hankins/

John A. Hankins
Registration No. 32,029
**Please recognize our Customer No. 49745
as our correspondence address.**

11682 El Camino Real, Suite 400
San Diego, CA 92130
Phone: 858.720.3300 JAH:tms
Facsimile: 858.720.7800
Date: January 5, 2009